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Paper No. 16
BAC

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Tower Tech, Inc.

Serial No. 75/709,532

Request for Reconsideration

Scott R. Zingerman of Fellers, Snider, Blankenship, Bailey
& Tippens, P.C. for Tower Tech, Inc.

Eugenia K. Martin, Trademark Examining Attorney, Law Office
114 (K. Margaret Le, Managing Attorney).

Before Seeherman, Walters, and Chapman, Administrative
Trademark Judges.

Opinion by Chapman, Administrative Trademark Judge:

On May 14, 2002 the Board affirmed the Examining
Attorney's refusal to register applicant's mark,
SMARTTOWER, under Section 2(e)(1) of the Trademark Act.
Applicant filed on June 14, 2002 (via a certificate of
mailing) a request for reconsideration.

Applicant argues that the Board's analysis fails to incorporate the complete definition of the word "smart" as "of, relating to, or being a highly automated device, especially one that imitates human intelligence..." in that it is not enough that the device contains a microprocessor, but that the microprocessor provides some functionality causing the device to imitate human intelligence; that the mere fact that a device is computer driven does not, by itself, make that device "smart" or highly automated; that many devices contain microprocessors in their function, but that fact alone does not mean the device imitates human intelligence; that there is no evidence of record to support the assertion that cooling towers may or do contain a microprocessor which allows the cooling towers to imitate human intelligence; and that the patents which disclose inventions that monitor the function of or evaluate the performance of cooling towers do not rise to the level of showing how the cooling towers imitate human intelligence.

Essentially, applicant relies on that portion of the definition of "smart" in The American Heritage Dictionary which refers to "especially one that imitates human intelligence." However, applicant fails to recognize that this phrase is an example, and not a requirement for a product to be considered "smart." The definition in its

entirety is: "5. a. of, relating to, or being a highly automated device, especially one that imitates human intelligence: smart missiles." Thus, applicant's assertion that in order for a device to be "smart" it must imitate human intelligence is simply too restrictive an interpretation in light of this definition, as well as the other dictionary definition and the Nexis evidence which were discussed in the Board's May 14, 2002 decision.

Applicant's request for reconsideration is denied.